IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.1029 of 2007

The Commissioner of Income-tax,
Tamil Nadu-I, Madras. ..Appellant/Appellant

Vs.

M/s.Tamil Nadu Transport Development
Finance Corporation Limited,
Tamil Nadu Tourism Complex IV Floor,
Near Kalaivanar Arangam, Wallaja Road,
Chennai-600 002. ..Respondent/Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench 'C', Chennai in I.T.A. No.1726/Mds/2004 dated 19.01.2007 for the assessment year 1997-98, against the order of the Commissioner of Income Tax (Appeals) III, 121, Mahatma Gandhi Road, Chennai 34 dated 18.3.2004 in ITA.No.374/2003-07/A-III against the order of the Assistant Commissioner of Income Tax Company Circle III (1) Chennai dated 14.1.2004 and made in GIR.No.PAN 31020-T/AAACT 0747L for the assessment year 1997-98.

For Appellant : Mr.J.Narayanaswamy,
Standing Counsel for
Income-tax Department

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JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Chennai Bench 'C', Chennai in I.T.A. No.1726/Mds/2004 dated 19.01.2007, raising the following substantial question of law:-

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"Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in upholding the order of the Commissioner of Income-tax (Appeals) and accordingly the reopening of the assessment under section 147 read with section 148 is held as bad in law, even though the facts and circumstances of the case fall within the exemption provided in Explanation 1 to section 147 of the Income-tax Act, 1961?"

2. The facts leading to the above substantial question of law are as under:-

The assessee is a Company. It is a Government of India Undertaking. The relevant assessment year is 1997-98 and the corresponding accounting year ended on 31.03.1997. Regular assessment was completed on 30.03.1999 under Section 143(3) of the Income-tax Act ("Act" in short), determining the income at Rs.11,40,72,670/-. Subsequently it was noticed that the interest accrued and receivable by the assessee company from another company, viz., M/s.Tamil Nadu State Civil Construction Corporation Limited amounting to Rs.148.69 lakhs, was omitted to be brought to tax. In view of the same, notice under Section 148 of the Act was issued on 24.06.2003. The assessee had sent a reply stating that Return of income filed earlier could be treated as filed in response to the notice under Section 148 of the Act. The information regarding interest accrued and receivable from M/s.Tamil Nadu State Civil Construction Corporation Limited was very much available in the 22nd Annual Report of the assessee company, which was filed along with the original Return of income. The Assessing Officer completed the reassessment under Section 143 (3) r/w Section 147 of the Act by including interest accrued and receivable from M/s.Tamil Nadu State Civil Construction Corporation Limited. Aggrieved by the reopening of the assessment, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) accepted the contention of the assessee and allowed the appeal and held that reopening of the assessment under Section 148 is bad in law. Aggrieved, the Revenue filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the Revenue's appeal and confirmed the order of the C.I.T.(A). Hence the present appeal by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that the interest accrued and receivable by the assessee company from another Government Company, Viz., M/s.Tamil Nadu State Civil Construction Corporation Limited, amounting to Rs.148.69 lakhs was omitted to be brought to tax. It is further submitted that the mere statement in the Annual Report about the conversion of the interest into loan and recognition of interest does not amount to full disclosure of the materials at the time of

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completing the assessment under Section 143(3) of the Income-tax Act. It is also further submitted that the present case would fall within the Explanation 1 to Section 147 of the Act. Hence the Assessing Officer is right in reopening the assessment.

4. Heard the counsel. In the original assessment proceedings the Assessing Officer had considered all the details filed by the assessee and only thereafter, completed the assessment under Section 143 of the Act. Based on the same details and other documents filed along with the Return, the assessment was completed. There is no failure on the part of the assessee to disclose fully and truly all material facts. The assessee has filed a copy of the 22nd Annual Report along with the Return of income. The C.I.T.(A), in his order, held as follows:-

> "I have carefully considered the above submission and perused the assessment records. The appellant has filed a copy of its 22nd Annual Report along with return of income. Para 3.0(a) page 28 of the Annual Report reads as under:-
>
> > "The interest on the term loan granted to Keerapalayam Panchayat Union / TNSCC for construction of a bridge across Vellar River near Sethiathope accounted for in the accounts upto 31.3.95 on consistent basis was Rs.224.82 lakhs. The Government under G.O.Ms.No.77, Transport Department, dt.3.4.96 stated that out of the interest due of Rs.397 lakhs on the principal upto 31.3.95, Rs.100 lakhs should be waived and should treat the balance amount of Rs.297 lakhs as a fresh loan with effect from 1.4.95 at 12% simple interest repayable in five annual instalments. Even though Govt. have directed to treat the interest of Rs.297 lakhs due as loan since the borrower is a defaulter ab initio as a prudent measure and as per the prudential norms on income recognition issued by RBI the interest income received will be taken into account on realisation basis. The amount not taken into account is Rs.72.18 lakhs being the difference in interest provided by the Company and Rs.297 lakhs allowed by the Government and Rs.76.51 lakhs being interest at 12% on Rs.297 lakhs for 1995-96 and 1996-97 and penal interest. However a sum of Rs.15.39 lakhs being the toll charges received from STUs during the year 1995-96 has also been taken to revenue for 1996-97. As such the TNSCC amount not taken into account is Rs.148.69 lakhs".

The above information has been taken as a basis to hold that the income of Rs.148.69 lakhs has escaped assessment. This information was available with the Assessing Officer in the course of original

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assessment proceeding. He did not made any addition at the time of completing the original assessment. In fact, in the present case, the assessee had disclosed all the material facts before the Assessing Officer. The Tribunal, in paragraph-5 of its order, held as follows:-

> "The facts are undisputed. During the course of hearing the ld Departmental Representative has not controverted the fact that reopening is after four years and also the reopening of assessment is based on the 22nd Annual Report which was filed along with the return of income. He only argued that the Assessing Officer could not notice this interest accrued and receivable is on account of escapement of income. On a query from the Bench, the ld Departmental Representative could not state any failure on the part of the assessee to disclose any material facts necessary for this assessment. As the proviso to sec.147, is very clear that where the assessment is made under section 143(3) of the Act, then no action shall be taken under this section after the expiry of four years from the end of relevant assessment year unless income chargeable to tax has escaped assessment for the relevant assessment year by reason of failure on the part of the assessee to disclose fully and truly all the material facts necessary during the course of original assessment proceedings. The conditions as enumerated in the proviso in the present case are not met with by the Revenue, while issuing notice under section 148 for reopening of assessment under section 147 of the Act. It is a fact that during the course of original assessment proceedings the information regarding interest accrued and receivable by the assessee from another Government Company i.e M/s.Tamil Nadu State Civil Construction Corporation Limited was very much available in the 22nd Annual Report, which was filed with the original return of income. In any case it cannot be said that the above income was not added during course of original assessment proceedings due to the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment."

Hence the finding by the authorities below is that the Revenue failed to prove that there is a failure on the part of the assessee to disclose any material facts necessary for assessment. Hence they have rightly come to the conclusion that when the assessment is made under Section 143(3) of the Act, no action shall be taken

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under Section 147 of the Act after the expiry of four years from the end of relevant assessment year unless there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. This Court also considered the scope of proviso to Section 147 of the Act in a number of judgments. In the case of Commissioner of Income-tax Vs. Elgi Finance Ltd., reported in 286 ITR 674, this Court considered the scope of proviso to Section 147 of the Act and held as follows:-

> "The law relating to the reassessment has undergone a change from April 1, 1989. The change was brought in by the Direct Tax Laws (Amendment) Act, 1987. Two sets of provisions were available under section 147 in clause (a) and clause (b). This distinction has now been taken away by the Amendment Act. Previously, the line of distinction was a limitation period of four years and the limitation period exceeding four years. The Assessing Officer would reopen a back assessment within a period of four years as long as he had reason to believe in consequence of any information, that income has been under-assessed or income has escaped assessment. In the case of limitation, providing for a period exceeding four years, there should have been a failure on the part of the assessee to disclose fully and truly all material facts leading to the escapement of income. But as a result of the amendment brought with effect from April 1, 1989, the above distinction had been obliterated and the Assessing Officer could reassess the income as long as he had reason to believe that income chargeable had escaped assessment. The new law has inserted a proviso to section 147 in the following words:
>
> > "Provided that where an assessment under sub-section(3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year."
>
> In addition to the time-limits provided for under section 149, the law has provided another limitation of four years under the proviso to section 147. As far as the above proviso to section 147 is concerned, the law prescribes a period of four years to initiate reassessment proceedings, unless the income alleged to have escaped assessment was made out as a result of

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failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment."

In the present case, the assessment year is 1997-98 and the Assessing Officer issued notice for reopening under Section 148 on 24.06.2003, which is beyond four years after the end of the assessment year. Hence it is clearly barred by limitation under proviso to Section 147 of the Act. Following the above principle, the Tribunal is correct in its conclusion that reopening is bad in law. The concurrent finding given by both the authorities below is based on valid materials and evidence. In the case of Commissioner of Income-tax Vs. P.Mohanakala [2007] 291 ITR 278 (SC), the Supreme Court held that whenever there is a concurrent finding by the authorities below, no interference should be called for by the High Court. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

5. In view of the foregoing reasons, no substantial question of law arises for consideration of this Court and accordingly, the tax case is dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Chennai Bench 'C', Chennai.

2. The Commissioner of Income-tax (Appeals) III,
   Chennai-600 034.

3. The Assistant Commissioner of Income-tax,
   Company Circle III(1), Chennai-34.

4. The Commissioner of Income Tax,
   Tamil Nadu I, Madras.

5. The Assistant Registrar,
   the Income Tax Appellate,
   Rajaji Bhavan III Floor, Besant Nagar, Chennai 90.

+ 1 cc to M/s. Pushyasitarman, Advocate SR No. 41070

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SR/25.7.2007

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